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Federal Communications Commission
Office of Secretary

November 4, 1996

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to James Casserly, Senior Legal Advisor to Commissioner Susan Ness on behalf of the American Public Communications Council regarding the issue of level of per-call compensation. I would ask that you include these materials in the record of this proceeding.

If you have any questions concerning this matter, please contact me at (202) 828-2226.

Thank you for your consideration.

Sincerely,

Albert Kramer by RFA

Albert H. Kramer

AHK/nw

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November 4, 1996

BY COURIER

James L. Casserly
Senior Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Jim:

We understand that you have expressed interest in some issues raised by the messaging providers (MPs) regarding the level of per-call payphone compensation, and whether cost differences that may be attributed to local coin calls and dial-around calls should be reflected in the determination of the level of payphone compensation.

The enclosed document is relevant to these arguments, which are essentially the same as raised by the interexchange carriers and MPs.

If you have any questions concerning this matter, please contact me at (202) 828-2226.

Thank you for your consideration.

Sincerely,

Albert Kramer by RJA

Albert H. Kramer

AHK/nw
cc: W. Caton

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EX PARTE PRESENTATION
AMERICAN PUBLIC COMMUNICATIONS COUNCIL (APCC)

Docket No. 96-128
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

PER-CALL COMPENSATION AMOUNT

The compensation rate of 35 cents per call is less than the 1992 effective rate of 40 cents per call. While total per-phone dial-around compensation for independent payphone service providers (PSPs) will be much greater, that is a reasonable and expected result given that:

- the volume of access code calls is three times the volume estimated in the FCC's 1992 Order, and there have been concomitant reductions in 0+ revenue for independent PSPs (this alone would justify an increase in per-phone compensation to $18 per month);
- the Commission is now under a court and congressional mandate to compensate for subscriber 800 calls, correcting a 1992 Commission misinterpretation. There are more than twice the number of subscriber 800 calls as there are access code calls.

Interexchange carriers (IXCs) have successfully avoided for years paying any compensation at all on the vast majority of dial-around calls -- i.e., most intrastate access code calls and virtually all interstate and intrastate subscriber 800 calls. The compensation is not a windfall for PSPs but an end to the IXC windfall of receiving dial-around calls for nothing. The compensation amount must also be considered in light of carriers' savings, conservatively estimated at $650 million per year, in interstate and intrastate CCL charges and equivalents resulting from removal of LEC payphones from regulated accounts.

The proper compensation methodology is market-based, not cost-based. PSPs are not "telecommunications carriers" (47 U.S.C. § 153(44)) and the relevant standard is "ensure that all [PSPs] are fairly compensated" (47 U.S.C. § 276(b)(1)(A)), not "just", "reasonable", or "based on . . . cost" (47 U.S.C. §§ 251(c), 252(d)). Market proxies are court-approved in analogous circumstances. Amusement and Music Operators Ass'n v. Copyright Royalty Tribunal, 676 F.2d 1144 (7th Cir. 1982)(upholding jukebox royalty fee based on "marketplace analogies"). TELRIC cost methodology is applicable to a bottleneck monopoly -- but not to thousands of competing payphone service providers ("PSPs"). 47 U.S.C. §§ 251(c), 252(d).

The Commission used the local coin rate as an approximation of what the market would produce if both PSPs and carriers were free to negotiate for a per-call compensation rate. While the Commission reasonably estimated 35 cents to be a reasonable approximation of a fully competitive local coin rate, the evidence indicated that the market value of other payphone calls is substantially higher: 45-90 cents for a 0+ call (APCC Comments at 32; RBOC Coalition at 10-11); 42-49 cents for a 0- transfer call (RBOC Coalition at 11-12, n. 12); 75 cents - $1.95 for a sent-paid toll call (APCC Comments at 32). Thus, the coin rate is at the low end of the range of reasonable estimates of the market value of the use of a payphone to make a call.

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Even using a cost-based proxy, the 35-cent default rate is in the range of reasonable estimates of cost (including a corrected version of the messaging providers' and AT&T's TSLRIC method, which excludes all coin-related costs and all usage sensitive local costs), and was shown to be less than necessary for the largest independent PSP to earn a reasonable profit. See APCC Opposition to Petitions for Reconsideration at 13-15, attached. A lower per-call compensation rate, of course, would compel PSPs to charge higher local coin rates in order to recover costs.

Further, in considering a cost-based proxy, the Commission correctly found that, while some portion of the local calling rate is attributable to network usage (perhaps 5 cents per call), the bulk of call-originating costs are fixed (Order, ¶ 73), and must be recovered on all calls. Compensation levels received by PSPs on other payphone calls recover more of those fixed costs per call than a local coin call does, and support compensation rates higher than 35 cents per call (see above). Therefore, in the context of cost-based proxies, it is reasonable for the Commission to conclude that 35 cents is an appropriate "market based cost surrogate" based on "average" cost recovery on all calls.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

To: The Commission

AMERICAN PUBLIC COMMUNICATIONS COUNCIL'S OPPOSITION TO PETITIONS FOR RECONSIDERATION OF IXCs AND MESSAGING PROVIDERS

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October 28, 1996

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convincingly that the payphone business is not profitable based on current revenues. Especially in light of the Commission's pending proceedings to ensure reduced rates for 0+ calling, the financial data submitted by these PSPs showed that average compensation of at least 40 cents per call on coin and coinless calls was necessary in order for PSPs to become profitable. If PSPs are denied even 35 cents per call on dial-around calling, there is only one feasible means to recover the revenue shortfall. Local coin calling rates would have to increase beyond the estimated 35 cents market rate.

It is reasonable for the Commission to conclude that local coin callers should not be artificially burdened with such additional cost recovery, and that average costs should be spread across all categories of calls given the degree of similar, or "like," characteristics of the calls and the Commission's discretion.

C. The Commission's 35 Cents Is Within The Range Of Reasonable Cost Estimates

The IXCs and messaging providers' arguments essentially disregard that there is a solid cost as well as market basis for the Commission's prescription of a 35-cent default rate for dial-around calls. As discussed above, the largest PSP showed that its revenue requirements to earn a reasonable rate of return, assuming a 35-cent coin rate, were well in excess of 40 cents per call. Comments of Peoples, Table 4. Moreover, even the Bell companies, who have a strong incentive to minimize their payphone costs in order to

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(Footnote continued)
comparisons was utterly discredited by Peoples and CCI in an earlier submission. See Letter to William F. Caton, Secretary, FCC, from Robert F. Aldrich, dated September 11, 1996.

minimize the amounts removed from their regulated revenue requirements, estimated costs of 25-32 cents per call. Comments of RBOC Coalition, Appx., "Calculation of Per-Call Compensation," at 10.

Furthermore, even AT&T's estimate of "TSLRIC" supports a number in the range of what the Commission prescribed, once AT&T's calculations are corrected for a few obvious errors. Based on costs that it attributed to the operation of non-coin payphones, AT&T estimated costs of 6-11 cents per call. AT&T Petition at 7, citing AT&T Reply at 8-9. However, this estimate excluded such obviously relevant costs as local exchange service,[13] collection costs,[14] and commission costs.[15] Including 6-7 cents per call (AT&T at 7-8, n. 7) for line charges immediately increases the cost of 12-18 cents per call. Adding 25% for commissions brings this total to 15-22.5 cents per calls, and adding 20%

13 There is absolutely no rationale basis for AT&T's exclusion of a fair share of local exchange line charges. See APCC Reply comments at 31-32.

14 See APCC's September 16 Ex Parte estimating current collection costs and shortfalls of roughly 25%.

15 Similarly, commissions are properly included as a percentage of any charge, including dial-around charges, that results in revenue in which location owners logically would expect to share. While AT&T argues that commissions should not be included because it will result in undesirable increases in commission payments, AT&T has always argued that commissions may be included as cost support for AT&T's long distance rates, and the FCC has agreed. Further, the payment of commissions to location owners will not necessarily result in higher commissions to location owners. Equally likely is that those commission payments will simply be redistributed from other services. This is particularly likely since the Commission is currently considering measures that are likely to substantially reduce revenues from 0+ charges, on which a substantial percentage of current location commissions are paid. Finally, even if commission payments did increase, this is not inherently undesirable. The record of this proceeding reflects that total deployment of payphones has remained stagnant in recent years. Increased commissions will tend to persuade location owners to allow the placement of additional payphones and will result in "widespread deployment of payphone services" as intended by the Act.

collection costs brings the total to 18-27 cents per call. In addition, AT&T appears to have omitted a reasonable return on investment. When a 1 cent return is included, AT&T's costs reach 19-28 cents per call. However, AT&T's analysis contains one other major flaw. AT&T assumes a call volume of 500-700 calls per month. Four or five hundred of these calls are <u>coin calls</u>. When the estimates are corrected to reflect the average volume of 200 coinless calls per month reflected in the record,[16] the AT&T coinless payphone cost per call increases to 65-70 cents per call. And these estimates relate to assumedly <u>lower</u>-cost coinless payphones.

The Commission's prescribed default rate of 35 cents per call falls well within the "zone of reasonableness" established by these varying analyses.

D. Payphone Compensation Will Not Unduly Dislocate The Long Distance Market

The other arguments of IXCs and messaging companies against the Commission's default rate boil down to the complaint that the 35 cents per-call rate will cause "rate shock" to the IXCs and/or 800 service subscribers. AT&T complains that a 35 cents surcharge per call would increase call charges for access code callers by 11.5%. In fact, AT&T is already paying IPP providers 25 cents per access code call.

With respect to subscriber 800 calls, AT&T argues that a $.35 per-call surcharge would "nearly <u>double</u>" subscriber charges on 800 calls from payphones.

16 APCC Reply Comments, Attachment 2 (this is independent PSP data only -- RBOC estimates are presumably lower).